

REMARKS

The Office Action of November 26, 2003, has been received and reviewed. Claims 16, 17, 72 and 73 are allowable. Claims 3, 6, 8, 10, 13, 14, 16, 17, 60, 62, 66, 69, and 70 stand rejected. Claims 3, 6, 8, 10, 13, 14, 16, 17, 60, 62, 66, 69, and 70 are hereby canceled without prejudice or disclaimer. Reconsideration is respectfully requested.

Support for the claim amendments:

Support for the claim amendments can be found throughout the specification. For example, support can be found for the following claims at:

claims 74, 75, 87 and 88	page 83, line 6 to page 87, line 7;
claims 76, 89	page 83, line 6 to page 87, line 7 and page 27, lines 13-23;
claim 77	page 48, line 22 to page 49, line 8;
claim 78	page 36, line 21 to page 37, line 5 and page 42, lines 17-23;
claim 79	page 44, line 20 to page 45, line 13, page 49, line 18 to page 50, line 7 and page 94, line 26 to page 96, line 6;
claims 80-82	page 117, line 21 to page 123, line 29 (Example 10)
claim 83 and 84	page 49, line 18 to page 50, line 7; and
claim 85 and 86	page 44, line 18 to page 45, line 13.

Claims 74-78 are dependent from allowed claim 73, and are therefore allowable for the same reason as claim 73.

Claim 79 is based on claim 73, but describes welding together at least two nucleic acid molecules, and that the capsid is chimeric. By chimeric capsid (the hexon, penton and fiber proteins) it is meant that a capsid protein or a fragment thereof, is derived from a different adenovirus serotype than the other capsid proteins (*e.g.*, Example 10; and page 49, line 18 to page 50, line 7). It is respectfully submitted that claim 79 is allowable for the same reasons as claim 73.

Claims 80-89 are dependent from claim 79 and should be allowable for the same reasons as claims 73 and 79.

35 U.S.C. § 102 rejections:

Claims 6, 8, 14, 60, 62 and 70 stand rejected under 35 U.S.C. § 102(b) as allegedly being anticipated by Berkner or Stratford-Perricaudet *et al.* Claims 6, 8, 13, 14, 60, 62, 69 and 70 stand rejected under 35 U.S.C. § 102(e) as allegedly being anticipated by Fallaux *et al.* While applicants respectfully disagree with the examiner, these claims have been canceled without prejudice or disclaimer to expedite prosecution. Therefore, no further comment should be necessary, since the cancellation of the claims moots the rejection.

35 U.S.C. § 103 rejections:

Claims 10 and 66 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Berkner. While applicants respectfully disagree with the examiner, these claims have been canceled without prejudice or disclaimer to expedite prosecution. Therefore, no further comment should be necessary, since the cancellation of the claims moots the rejection.

35 U.S.C. § 112 rejections:

Claims 3, 6, 13, 14, 62, 69 and 70 stand rejected under 35 U.S.C. § 112, second paragraph, as assertedly being indefinite. Claims 3, 6, 13, 14, 62, 69 and 70 have been canceled, thereby mooting the rejection.

Claims 13 and 69 stand rejected under 35 U.S.C. § 112, first paragraph, as allegedly lacking sufficient enablement. Claims 13 and 69 have been canceled. However, new claims 76 and 89 present the same issue, and the applicants respectfully traverse the rejection.

The Office asserts that the Declaration submitted on February 2, 2002, lacks a statement that the deposited biological material is the biological material identified in the specification as

filed. The previously submitted Declaration by Dr. Valerio specifically describes the deposit of "PER.C6, under number ECACC 96022940" (para. 4 of the Declaration submitted January 28, 2002), which parallels the description in the specification and claims of the cell line deposited, "(PER.C6) was deposited at the ECACC under number 96022940" (page 27, lines 13-23). Thus, the Declaration does state that the biological material which is deposited (ECACC 96022940) is the biological material specifically identified in the application as filed (ECACC 96022940). Therefore, no further statement should be necessary.

However, attached herewith is an unexecuted copy of a supplemental Declaration containing an express statement that the biological material referenced in the declaration is believed to be the same as the biological material described in the specification. Applicants offer to submit the executed Declaration when it becomes available.

Reconsideration and withdrawal of the rejection is respectfully requested.

**Priority Claim:**

The applicants thank the Examiner for pointing out the priority issue and acknowledge that benefit of Patent Application No. 95201728.3, filed June 26, 1995, is not claimed. As noted in the first line of the specification, the present application is a continuation-in-part of 09/065,752, filed April 24, 1998.

Upon review of the priority claim, the applicants noticed that the filing receipt is in error. Specifically, it refers to the present application as a continuation of application number 09/065,752, when it is in fact a CIP. The applicants are concurrently requesting a corrected filing receipt.

**Appl. No. 09/332,803**  
**Amdt. dated February 17, 2004**  
**Reply to Office Action of November 26, 2003**

**CONCLUSION**

Claims 16, 17, 72 and 73 are allowed, new claims 74-86 are believed to be in condition for allowance, and an early notice thereof is respectfully solicited. In the event questions remain after consideration of these remarks and amendments, the Office is kindly requested to contact applicants' attorney at the number given below.

Respectfully submitted,



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